

**MDCH Synopsis of Comments for CON Standards Scheduled for 2007 Review
Presented to CON Commission March, 13, 2007**

NURSING HOME AND HOSPITAL LONG-TERM CARE UNIT BEDS, ADDENDUM FOR SPECIAL POPULATIONS GROUPS, AND ADDENDUM FOR NEW DESIGN MODEL PILOT (Please refer to 3.05.07 MDCH staff analysis for additional detail - attached)			
All Identified Issues	Issue Recommended for Review?	Recommended Course of Action to Review Issues	Other/Comments
1. Include quality measures for initiation, acquisition and expansion	Yes	Potentially refer for SAC discussion	
2. Review CON standards to ensure consistency with state LTC policy and regulations to the extent that they may be within the scope of CON authority	Yes	Potentially refer for SAC discussion	Specific activities that are the responsibility of other entities may fall outside the scope of a SAC. However, the SAC should have an awareness of the direction in which state policy is moving
3. Review definitions and methodologies contained in the standards and potentially examine other options	Yes	Potentially refer for SAC discussion	
4. Review the applicability of and need for designation of special population group beds	Yes	Potentially refer for SAC discussion	
5. Review pilot status of New Design Model Project (FIDS)	Yes	Potentially refer for SAC discussion	
6. Review need for high occupancy language similar to other CON standards	Yes	Potentially refer for SAC discussion	
7. Review definition of replacement zone	No	None at this time	This issue is currently addressed by statute
8. Consider mandating dual certification	No	No specific activity at this time	MCL 333.22215(1) currently prohibits this mandate
9. Consider standards	No	No specific activity at	This issue would

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that require service without regard to ability to pay		this time	require legislative action
10. Review of project delivery requirements; specifically regarding onsite geriatric services	Yes	Review draft language developed by the department to address geriatric services	
11. Technical changes proposed by the department to ensure uniformity with other CON standards	Yes	Review draft language developed by MDCH staff	
Recommendation: The Department suggests that the Commission assign responsibility to Department staff to draft technical changes (# 10 and #11). The Department further suggests that the Commission consider appointing a SAC to bring back recommendations for items #1 through # 6 and to provide its final recommendations at the December 2007 meeting. The Department is prepared to assist the Chair and Vice-Chair in drafting a charge to the SAC that is based upon the Commission's determination and decision of the items that are to be included.			

Michigan Department of Community Health
MEMORANDUM
Lansing, MI

DATE: March 5, 2007
TO: Irma Lopez
FROM: Andrea Moore
RE: 2007 Review of Nursing Home and Hospital Long-Term-Care Unit Beds Standards

Pursuant to MCL 333.22215 (1)(m), the Certificate of Need (CON) Commission is to "...review, and if necessary, revise each set of Certificate of Need (CON) standards at least every 3 years." In accordance with the established review schedule on the Commission Workplan, the Nursing Home and Hospital Long-Term-Care Unit Beds Standards are scheduled for review in calendar year 2007.

Public Hearing Testimony

The Department held a Public Hearing to receive testimony regarding the Standards on January 9, 2007, with written testimony being received for an additional 7 days after the hearing. Testimony was received from 12 organizations and is summarized as follows:

1. ADAPT Michigan
 - Requesting a Standard Advisory Committee (SAC) comprised of a consumer majority.
 - Recommends modifying definitions and methodology to encompass all current types of Long-Term-Care (LTC) options.
 - Review 2005 Governor's Medicaid LTC Task Force Report for additional recommendations.
 - Establish quality measures to ensure Nursing Home operators are in compliance with all regulatory standards prior to issuance of an additional CON.
2. AARP Michigan
 - Requesting a SAC comprised of a consumer majority with diverse geographic, generational and cultural representation.
 - Recommends definitions and methodologies that encompass all current types of LTC options.
 - Review 2005 Governor's Medicaid LTC Task Force Report for additional recommendations.
 - Establish quality measures to ensure Nursing Home operators are in compliance with all regulatory standards prior to issuance of an additional CON.
3. Alzheimer's Association
 - Recommends Standards that encompass all current types of LTC options.
 - Review 2005 Governor's Medicaid LTC Task Force Report for additional recommendations.
 - Requesting a SAC comprised of a consumer majority.
4. Area Agencies on Aging Association of Michigan
 - Requesting a SAC comprised of a consumer majority with diverse geographic, generational and cultural representation.
 - Recommends definitions and methodologies that encompass all current types of LTC options, including home-based services and assisted living.
 - Review 2005 Governor's Medicaid LTC Task Force Report for additional recommendations.
 - Establish quality measures to ensure Nursing Home operators are in compliance with all regulatory standards prior to issuance of an additional CON.

5. Economic Alliance for Michigan
 - Establish quality measure to ensure Nursing Home operators are in compliance with all regulatory standards and building codes prior to issuance of an additional CON.
6. Fair Acres Care Center
 - Recommends additional Medicaid funding for other LTC options, including assisted living and home health care.
7. Heath Care Association of Michigan
 - Recommends extending the New Design Model Pilot Program for an additional 4 years.
 - Recommends establishing a SAC to review the standards.
8. Michigan Poverty Law Program
 - Requesting a SAC with consumer advocates representation.
 - Recommends definitions and methodologies that encompass all current types of LTC options.
 - Review 2005 Governor's Medicaid LTC Task Force Report for additional recommendations.
 - Establish quality measures to ensure Nursing Home operators are in compliance with all regulatory standards prior to issuance of an additional CON.
 - Require all facilities to be dually certified in Medicaid and Medicare.
 - Ensure that all providers are providing care to all patients regardless of individual source of payment on a first come first serve basis.
 - Coordination of Medical Services Administration, Office of Long Term Care Supports and Services, Office of Services to the Aging and the Department of Human Services to provide well-rounding coordinated plan.
9. Michigan Disability Right Coalition
 - Review 2005 Governor's Medicaid LTC Task Force Report for additional recommendations.
 - Establish quality measures to ensure Nursing Home operators are in compliance with all regulatory standards prior to issuance of an additional CON.
 - Recommends definitions and methodologies that encompass all current types of LTC options, including home-based services and assisted living.
10. Michigan State Long Term Care Ombudsman
 - Requesting a SAC comprised of a consumer majority.
 - Establish quality measures to ensure Nursing Home operators are in compliance with all regulatory standards prior to issuance of an additional CON.
 - Ensure that Nursing Home enforcement is strong and consistent.
 - Recommends definitions and methodologies that encompass all current types of LTC options.
 - Require all facilities to be dually certified in Medicaid and Medicare, enforcing that all Medicare certified beds seek Medicaid certification.
 - Ensure that all providers are providing care to all patients regardless of individual source of payment.
11. Spectrum Health
 - Review the definition of replacement zone for an increase in the zone for metropolitan counties.
 - Modify high occupancy language to be facility-specific.
 - Recommends the addition of a category for patients with psychiatric diagnosis in the Special Population Group.
 - Recommends elimination of Section 3(3) in the Addendum for New Design Pilot Program.

12. University of Michigan
- Recommends establishing clinical certification for skilled facilities, ie. Traumatic brain injury, ventilator-dependent, kidney dialysis, etc.
 - Recommends set list of on-site services and personnel required, ie. Geriatric physician, geriatric pharmacist, occupational and physical therapist, etc.
 - Review Medicaid issues of the availability of Medicaid beds and the difficulty in securing Medicaid coverage for patients.

Standard Advisory Committee

The Department received seven (7) recommendations that the Nursing Home and Hospital Long-Term-Care Unit Beds Standards be reviewed utilizing the appointment of a SAC. Several requests contained specific composition of the SAC. These requests for specific composition should be reviewed and compared to the legal requirements outlined by the statute. The composition of a SAC is determined pursuant to MCL 333.22215(1)(l) as detailed below:

333.22215(1)(l) If the commission determines it necessary, appoint standard advisory committees to assist in the development of proposed certificate of need review standards. A standard advisory committee shall complete its duties under this subdivision and submit its recommendations to the commission within 6 months unless a shorter period of time is specified by the commission when the standard advisory committee is appointed. An individual shall serve on no more than 2 standard advisory committees in any 2-year period. **The composition of a standard advisory committee shall not include a lobbyist registered under 1978 PA 472, MCL 4.411 to 4.431, but shall include all of the following:**

- (i) **Experts with professional competence in the subject matter of the proposed standard, who shall constitute a 2/3 majority of the standard advisory committee.**
- (ii) **Representatives of health care provider organizations concerned with licensed health facilities or licensed health professions.**
- (iii) **Representatives of organizations concerned with health care consumers and the purchasers and payers of health care services.**

Additionally, the Nursing Home and Long-Term-Care Unit Beds Workgroup 2005 - 2006 met on five (5) occasions from December 2005 through September 2006. The Workgroup drafted language to allow the addition of beds for an individual facility with high occupancy and established quality criteria for initiation of a new facility, the acquisition of an existing facility and the addition of beds at an existing facility. The draft language was never presented to the Commission for review or action. The Workgroup was unable to reach a reasonable consensus on the issues and ended their work in September of 2006. Taking into consideration the Workgroup's previous difficulties in reaching a consensus on many of the same issues, it is recommended to appoint a SAC pursuant to MCL 333.22215(1)(l).

Quality Measures

The Department received seven (7) recommendations for the inclusion of quality measures for all applicants proposing to initiate service, expand service or acquire a service. The Nursing Home and Long-Term-Care Unit Beds Workgroup 2005 – 2006 evaluated this issued and drafted language on this issue, but due to non-consensus of the Workgroup, the language was not presented to the Commission.

The Nursing Facilities, Staffing, Residents and Facility Deficiencies 1999-2005 Report, prepared and published by the University of California San Francisco in September 2006 was reviewed to evaluate national trends in quality of care provided in nursing homes. It is noted that Michigan is continually above the national average for the number of deficiencies per home and the percentage of facilities receiving a deficiency for actual harm, while the percentage of facilities in Michigan with no deficiencies is well below the national average. The breakdown of the data is as follows:

Nursing Facilities, Staffing, Residents and Facility Deficiencies, 1999-2005		2000	2001	2002	2003	2004	2005
Average Number of Deficiencies per Certified Nursing Facility	Michigan	9.6	8.4	9.2	9.9	10.9	8.8
	National Average	5.9	6.3	6.3	7.0	9.2	7.1
Percent of Facilities with No Deficiencies	Michigan	3.1	3.1	2.4	3.8	4.3	3.9
	National Average	16.6	13.7	10.0	9.9	9.9	8.8
Percent of Facilities Receiving a Deficiency for Actual Harm	Michigan	34.7	24.3	29.5	24.9	23.1	25.8
	National Average	23.5	21.1	18.0	16.6	15.5	16.9

Several CON states already have quality measures in their CON standards and the following are offered as examples:

The State of Arkansas will not grant a Permit for Approval to an application in which the applicant has any of the following conditions:

- A project that does not eliminate all three (3) bed units in the applicant's facility, except to comply with specific regulations for intensive care, Alzheimer's, or sub-acute care units.
- A project that does not include a sprinkler system and generator.
- An application for a facility with a current life threatening compliance issues that will not be corrected by the proposed construction.
- An application for a facility with a level H deficiency or higher in the 12 months preceding the date of the application or until the final decision of the Commission.
- An application for a facility where the owner/operator has abandoned one (1) or more LTC facilities either in Arkansas or in another State.
- The Agency may consider an applicant's compliance and enforcement history.

The State of Georgia will not grant a CON to an application in which the applicant has any of the following conditions:

- An application for a facility with uncorrected operational standards in any existing Georgia nursing home owned and/or operated by the applicant or by the applicant's parent organization. Plans to correct physical plan deficiencies in the apply facility must be included in the application.
- An applicant and any facility owned and/or operated by the applicant or its parent organization shall have no previous conviction of Medicaid or Medicare fraud.

The State of Virginia, when having competing applications, will give preference as follows:

- To applicants who can demonstrate a consistent history of compliance with state licensure regulations.
- To applications who are accredited by the Joint Commission on Accreditation of Health Care Organizations or another appropriate accrediting body and who can demonstrate a history of operating accredited facilities.
- To applicants who can demonstrate a consistent pattern of licensure surveys with few deficiencies and a consistent history of few complaints.

It is recommended that the SAC consider inclusion of quality measures for all applicants and the owner/operator proposing to initiate service, expand service or acquire a service, and provide specific criteria. This does not negate the necessity of continued presence of enforcement activity.

Recommendation from the Michigan Medicaid Long-Term-Care Task Force

The Department received six (6) recommendations for the review of the final report of the Michigan Medicaid Long-Term-Care Task Force for additional SAC guidance. The Michigan Medicaid LTC Task Force was created by Governor Granholm via executive order in 2004 to evaluate multiple Medicaid and LTC issues. The final report of the Task Force was published in May 2005 and is available at:

<http://www.ihcs.msu.edu/LTC/default.htm>. It is recommended that the SAC review of the final report of the Michigan Medicaid Long-Term-Care Task Force for guidance in responding to all charge items.

Definitions and Methodologies

The Department received six (6) recommendations to modify the definitions and methodologies of the Nursing Home and Hospital Long-Term-Care Unit Beds Standards to consider additional LTC options currently available. The CON regulation of Nursing Home and Hospital Long-Term Care Beds are statutorily held in Part 222 of the Public Health Code. Pursuant to MCL 333.22215, the Commission may add cover clinical services, as follows:

MCL 333.22215 (1) The commission shall do all of the following:

(a) If determined necessary by the commission, revise, add to, or delete 1 or more of the covered clinical services listed in section 22203. If the commission proposes to add to the covered clinical services listed in section 22203, the commission shall develop proposed review standards and make the review standards available to the public not less than 30 days before conducting a hearing under subsection (3).

A covered clinical service is defined as follows:

MCL 333.22203 (10) "Covered clinical service", except as modified by the commission under section 22215, means 1 or more of the following:

(a) Initiation or expansion of 1 or more of the following services:

- (i) Neonatal intensive care services or special newborn nursing services.
- (ii) Open heart surgery.
- (iii) Extrarenal organ transplantation.

(b) Initiation, replacement, or expansion of 1 or more of the following services:

- (i) Extracorporeal shock wave lithotripsy.
- (ii) Megavoltage radiation therapy.
- (iii) Positron emission tomography.
- (iv) Surgical services provided in a freestanding surgical outpatient facility, an ambulatory surgery center certified under title XVIII, or a surgical department of a hospital licensed under part 215 and offering inpatient or outpatient surgical services.
- (v) Cardiac catheterization.
- (vi) Fixed and mobile magnetic resonance imager services.
- (vii) Fixed and mobile computerized tomography scanner services.
- (viii) Air ambulance services.

(c) Initiation or expansion of a specialized psychiatric program for children and adolescent patients utilizing licensed psychiatric beds.

(d) Initiation, replacement, or expansion of a service not listed in this subsection, but designated as a covered clinical service by the commission under section 22215(1)(a).

While the Commission has the authority to add covered clinical services, an addition of any more LTC services to the definition of covered clinical services is not recommended.

Special Population Group Beds

The Department received one (1) recommendation to expand the Addendum for Special Population Group Beds to include a category for patients with psychiatric diagnosis. Special Population Group Beds need to be reviewed on a larger scale, as MCL 333.22217(1)(b), introduced in the 1980's, statutorily mandated the establishment of the Special Population Group to serve religious patients and patients with specialized health conditions until March 31, 2003, when it was repealed pursuant to P.A. 619. With the removal of MCL 333.22217 by P.A. 619, the Commission has the discretion to eliminate or modify the criteria of the Special Population Groups. It is recommended that the SAC review the Addendum for Special Population Group Bed for elimination of the addendum or modification of the addendum, including but not limited to the inclusion of a category for patients with a psychiatric diagnosis.

New Design Model Pilot Program

The Department received one (1) recommendation to extend the Addendum for New Design Model Pilot Program for an additional four (4) years and one (1) recommendation to eliminate Section 3(3) of the Addendum for New Design Model Pilot Program. In accordance to Section 3(1), the Addendum for New Design Model Pilot Program will be in effect from September 14, 2004, to September 14, 2008. To date, 11 facilities been approved under the pilot program.

Section 3(3) of the Addendum required that all new construction pilot project facilities must have 80% single occupancy rooms and an existing facility must not have any rooms that exceed double occupancy. It is maintained that Section 3(3) is an essential part of the New Design Model Pilot Program and should not be removal of this provision. It is recommended that the SAC review the Addendum for New Design Model Pilot Program for possible elimination, for an extension of the Pilot Program timeframe in Section 3(1), or possible removal of the pilot status to make the New Design Model a permanent addendum of the standards.

High Occupancy Language

The Department received one (1) recommendation to modify the high occupancy provisions in Section 6(c) to be facility specific high occupancy language. The Nursing Home and Long-Term-Care Unit Beds Workgroup 2005 – 2006 evaluated this issued and drafted language on this issue, but due to non-consensus of the Workgroup, the language was not presented to the Commission. In addition, other CON standards offer facility specific high occupancy language. It is recommended that the SAC review the high occupancy provision in Section 6(c) for possible modification to facility specific high occupancy.

Definition of Replacement Zone

The Department received one (1) recommendation to review the definition of replacement zone to increase the three (3) mile replacement zone in metropolitan areas. MCL 333.22229 provides guidelines with regards to a replacement application being subject to comparative review and is as follows:

MCL 333.22229 (3) Replacement beds in a nursing home that is located in a nonrural county that are proposed for construction on the original site, on a contiguous site, or within a 2-mile radius of the original site are not subject to comparative review. Replacement beds in a nursing home that is located in a rural county that are proposed for construction on the original site, on a contiguous site, or within the same planning area are not subject to comparative review.

It is recommended that the SAC review the definition of replacement zone.

Dual Certification of Medicaid and Medicare

The Department received two (2) recommendations to modify the standards to require dual certification in both Medicaid and Medicare. The Commission is statutorily excluded from requiring an applicant for Nursing Home and Hospital Long-Term Care Unit Beds to participate in Medicaid pursuant to MCL 333.22215(1), as follows:

MCL 333.22215 (1) The commission shall do all of the following:

(b) Develop, approve, disapprove, or revise certificate of need review standards that establish for purposes of section 22225 the need, if any, for the initiation, replacement, or expansion of covered clinical services, the acquisition or beginning the operation of a health facility, making changes in bed capacity, or making covered capital expenditures, including conditions, standards, assurances, or information that must be met, demonstrated, or provided by a person who applies for a certificate of need. A certificate of need review standard may also establish ongoing quality assurance requirements including any or all of the requirements specified in section 22225(2)(c). **Except for nursing home and hospital long-term care unit bed review standards, by January 1, 2004, the commission shall revise all certificate of need review standards to include a requirement that each applicant participate in title XIX of the social security act, chapter 531, 49 Stat. 620, 1396r-6 and 1396r-8 to 1396v.**

It is recommended that the standards continue to comply with statute and not require dual certification in both Medicaid and Medicare.

Ability to Pay

The Department received two (2) recommendations to modify the standards to require acceptance of all patients regardless of ability to pay. The Commission is statutorily excluded from requiring an applicant for Nursing Home and Hospital Long-Term Care Unit Beds to participate in Medicaid and accept all patients pursuant to MCL 333.22215(5), as follows:

MCL 333.22215 (5) The commission shall not develop, approve, or revise a certificate of need review standard that requires the payment of money or goods or the provision of services unrelated to the proposed project as a condition that must be satisfied by a person seeking a certificate of need for the initiation, replacement, or expansion of covered clinical services, the acquisition or beginning the operation of a health facility, making changes in bed capacity, or making covered capital expenditures. **This subsection does not preclude a requirement that each applicant participate in title XIX of the social security act, chapter 531, 49 Stat. 620, 1396r-6 and 1396r-8 to 1396v, or a requirement that each applicant provide covered clinical services to all patients regardless of his or her ability to pay.**

It is recommended that the standards continue to comply with statute and not require the acceptance of all patients regardless of ability to pay.

Project Delivery Requirements

The Department received one (1) recommendation for additional clarification as the requirements of on-site geriatric services needed at a nursing home. It is recommended that the SAC review the project delivery requirements for updating and possible inclusion of specified on-site services.

Technical Changes and Updates

The Department is systematically modifying all Standards to achieve uniformity, as well as in preparation for the launch of the on-line application system. In addition, there are several technical changes that need to be made to these Standards to remove old terminology and clarify current language.

Recommendations

It is recommended that no action be taken on the requests to modify to the definitions and methodologies to include all LTC options, require dual certification, require acceptance of all patients without consideration of ability to pay,

It is recommended that a SAC be appointed to review the following issues:

- Addendum for Special Population Group Bed.
- Establishment of quality measures for all applicants including the owner/operator.
- Addendum for New Design Model Pilot Program.
- High occupancy provision in Section 6(c).
- Definition of replacement zone.
- Project delivery requirements for updating and possible inclusion of specified on-site services.
- The 2005 Michigan Medicaid Long-Term-Care Task Force for guidance in the recommendations on the listed charge items.